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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/082,344	02/26/2002	David Langtry	84822-602 ADB	1681

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CANADA

EXAMINER

NOVOSAD, JENNIFER ELEANORE

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 02/12/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

10/082,344

Applicant(s)

LANGTRY, DAVID

Examiner

Jennifer E. Novosad

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 January 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) 3-8, 10, 12-14 and 17-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 9, 11, 15, 16 and 20-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 February 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restriction

Applicant's election without traverse of Species III, i.e., Figures 7-9, in Paper No. 5 is acknowledged. It is noted that applicant has stated that claims 11, 15, 16, and 20-26 read on the elected species. *However*, claims 11, 15, and 16 depend from claim 1 which has not been indicated by applicant to read on the elected species. *Thus*, since the examiner indicated in the previous Office action (see Paper No. 4) that claims 1, 2, and 9 are deemed to be generic, these claims, i.e., claims 1, 2, and 9, will be examined in addition to the claims, i.e., claims 11, 15, 16, and 20-26, listed by applicant. *Accordingly*, claims 3-8, 9, 10, 12-14, and 17-19 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no *allowable* generic or linking claim.

Drawings

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign(s) not mentioned in the description: 13B, as in Figure 2. A proposed drawing correction, corrected drawings, or amendment to the specification to add the reference sign(s) in the description, are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

The drawings are objected to because it appears that numeral 14, (both occurrences) located at the bottom of Figure 1, is not correct, in view of the fact that 14 is utilized to depict the straps. A proposed drawing correction or corrected drawings are required in reply to the Office

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action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Title

The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

Abstract

Applicant is reminded of the proper content of an abstract of the disclosure. The abstract should not refer to purported merits or speculative applications of the invention and should not compare the invention with the prior art, as in the last sentence.

Specification

The disclosure is objected to because of the following informalities:

On page 2, line 21, it appears that a --.-- should be inserted at the end of the line.

On page 8, line 20, it appears that "function" should be changed to --functions--.

Appropriate correction is required.

Claim Objections

Claims 1, 3, and 20 are objected to because of the following informalities:

It is noted that reference to lines in the following objections is taken relative to the line of the claim and not the line of the page as numbered by applicant.

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In claim 1, line 7, and claim 20, line 7, it is strongly suggested that "one above the next with" be changed to --above one another and each having--.

In claim 3, line 2, a --- (period) should be inserted after "wire".

In claim 20, line 20, it is suggested that --thereof-- be inserted after "edge".

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 2, 9, 11, 15, 16, and 20-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is noted that reference to lines in the following rejections is taken relative to the line of the claim and not the line of the page as numbered by applicant.

The language of the recitation "which is elevated" in line 13 of claim 1 and line 14 of claim 20 renders the claims indefinite since it is unclear what structure is elevated. *Further*, the language of the recitation "pressure from the shelves tending to increase the space" in lines 17-18 of claim 1 is awkward thereby making it unclear how the spacing is fixed when the pressure of the shelves increases the space. *Finally*, the language of the limitation "the elements supports" in line 23 is awkward since it appears that perhaps a word is missing after "elements".

Claim 1 (line 21) and claim 24 recite the limitation "the articles". There is insufficient antecedent basis for this limitation in the claims.

Claim 2 is rendered indefinite since the limitation "the angle of inclination" lacks proper antecedent basis in the claim. *Further*, the term "sufficient" is a relative term which renders the claim indefinite. The term "sufficient" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Claim 9 recites the limitation "the required spacing". There is insufficient antecedent basis for this limitation in the claim.

The limitation "the shelf" in claims 15, 16, and 20 lacks proper antecedent basis in the claims since claims 1 and 20, respectively, set forth a "plurality" of shelves, it is unclear whether each shelf has the feature set forth in the claims. *Further*, the language of the recitation "formed by primarily from" in claim 15 appears to be grammatically incorrect. Furthermore, it is unclear what is meant by "primarily", i.e., it is unclear whether the claim is setting forth the elements therein plus additional elements. *Finally*, the recitation "front to rear" in claim 15 renders the claim indefinite since the structural orientation is unclear.

Claim 20 recites the limitation "the rear receptacle" in line 21. There is insufficient antecedent basis for this limitation in the claim. Note lines 18-19.

Claim 22 recites the limitation "each stiffened member". There is insufficient antecedent basis for this limitation in the claim. *Further*, the term "reduced" in line 22 is a relative term and therefore renders the claim indefinite, i.e., it is unclear as to what structure the height is reduced.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 9, 11, 15, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Coretti, Jr. *et al.* '068.

Coretti, Jr. *et al.* '068 disclose a shelving rack comprising a frame structure having two generally vertical rear legs (13) and two generally vertical front legs (12) whereby the front legs (12) are spaced apart by a width defined in the rack and the rear legs are spaced by the same width; a plurality of shelves (10) arranged one above another and having a width substantially equal to the width of the rack and having a depth between a front edge and a rear edge of the shelf that is substantially equal to but greater than (see Figure 1) the depth defined between the front and rear legs in the rack; each shelf being supported at the front edge (generally at 47) so the weight of the front edge is carried by the front legs (12) by a rigid frame member (unnumbered see Figures 1 and 7 near element 16) connected between the front legs (13); each shelf is inclined upwardly and rearwardly and each having an element (at 17) at the rear edge (generally at 50) thereof in engagement with a front face of the rear legs; each front leg (12) connected to the respective rear leg (13) by braces (11) such that the space therebetween is fixed; each shelf being rigid between the front legs and between the rear legs; each of shelves formed from wires (72) extending from the front edge to the rear edge, a rear stiffener (50), a front wire (47) and transverse wires thereby defining a wire mesh.

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Claims **20** and **26** are rejected under 35 U.S.C. 102(b) as being anticipated by Bustos '051.

Bustos '051 discloses a shelving rack comprising a frame structure having two generally vertical rear legs (20) and two generally vertical front legs (30) whereby the front legs (20) are spaced apart by a width defined in the rack and the rear legs are spaced by the same width; a plurality of shelves (generally at 12) arranged one above another and having a width substantially equal to the width of the rack and having a depth between a front edge and a rear edge of the shelf that is substantially equal to but greater than the depth defined between the front and rear legs in the rack; each shelf being supported (see Figures 2 and 5) at the front edge so the weight of the front edge is carried by the front legs (30) by a front transverse shelf support beam (18a) connected between the front legs (30); each shelf supported at the rear edge by a rear transverse shelf support beam (18b) whereby each of the front (18a) and rear (18b) support beams includes a support receptacle and the rear beam being at a height above the front beam; each front leg (30) connected to the respective rear leg (20) by braces (24) such that the space therebetween is fixed; each shelf being rigid between the front legs and between the rear legs; the shelf having at the rear edge (see Figure 3) a downwardly turned rear edge portion (52) extending downwardly from the shelf plane (generally at 52a) to the rear receptacle. It is noted that the claims are not requiring that the shelf contact the support receptacles or that they be supported "in" the receptacles.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 21-23 (*with respect to claim 22, as the claim is best understood in view of the Section 112 rejections advanced above*) are rejected under 35 U.S.C. 103(a) as being unpatentable over Bustos '051 as applied to claims 20 and 26 above, and further in view of Coretti, Jr. *et al.* '068.

The claims differ from Bustos '051 in requiring the shelf to be formed from stiffener members (claims 21 and 22) and a wire mesh (claim 23).

Coretti, Jr. *et al.* '068 teach the rack as advanced above which comprises shelves having stiffener members (72) extending from the front edge to the rear edge which together with the transverse wires form a wire mesh.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the rack of Bustos '051 with stiffener members, as taught by Coretti, Jr. *et al.* '068, for increased support and stability.

Claims 24 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bustos '051 as applied to claims 20 and 26 above, and further in view of Kern *et al.* '441.

Bustos '051 discloses the rack as advanced above.

The claims differ from Bustos '051 in requiring the shelves to comprise a plastic sheet member (claim 24) with an upturned front edge (claim 25).

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Kern *et al.* '441 teach a rack comprising shelves (see Figure 5) which comprise a plastic sheet member (generally at 60) with an upturned front edge (54a).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the rack of Bustos '051 with shelves having a plastic sheet member, as taught by Kern *et al.* '441 for ease in economy and manufacture.

Conclusion


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Barrineau, III, Trevaskis, Webb, Shaw *et al.*, Linden *et al.*, Pfeiffer *et al.*, and Ferrucci *et al.* show various display racks.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Novosad whose telephone number is (703)-305-2872. The examiner can normally be reached on Monday-Thursday, 5:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (703)-308-2686. The fax phone numbers for the organization where this application or proceeding is assigned are (703)-305-3597 for regular communications and (703)-305-3597 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)-308-1113.


Jennifer E. Novosad
Examiner
Art Unit 3634

Jennifer E. Novosad/jen
February 6, 2003